

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF NORTH CAROLINA  
STATESVILLE DIVISION  
Civil Action No. 5:19-cv-0041-KDB-DCK**

<b>DANIEL DANFORD and HARRY )</b>	
<b>HOUTMAN, individually and on behalf of )</b>	
<b>all other similarly situated individuals, )</b>	
	)
<b>Plaintiffs, )</b>	<b>DEFENDANTS' PARTIAL MOTION TO</b>
	<b>DISMISS PLAINTIFFS' FIRST AMENDED</b>
<b>v. )</b>	<b>COLLECTIVE AND CLASS ACTION</b>
	<b>COMPLAINT</b>
<b>LOWE'S COMPANIES, INC. and )</b>	
<b>LOWE'S HOME CENTERS, LLC, )</b>	
	)
<b>Defendants. )</b>	

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Defendants Lowe's Companies, Inc. and Lowe's Home Centers, LLC (together, "LOWE'S") file this Partial Motion to Dismiss Plaintiffs' First Amended Collective and Class Action Complaint (ECF No. 17) pursuant to Federal Rules of Civil Procedure 12(b)(1) and 12(b)(6), and respectfully state as follows:

1. Counts II, III, IV, and V of the Plaintiffs' First Amended Collective and Class Action Complaint (the "AMENDED COMPLAINT") should be completely dismissed because Plaintiff Houtman, the only named plaintiff with standing to assert these claims under California law, is subject to an arbitration agreement and cannot litigate these claims.

2. The only remaining named plaintiff, Plaintiff Danford, lacks standing to pursue Counts II, III, IV, and V of the Amended Complaint on behalf of himself or the proposed Rule 23 class and does not plead the facts necessary to meet his burdens under *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007) and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009).

3. Lowe's refers the Court to its Memorandum of Law in Support—which is filed contemporaneously herewith and incorporated in full for all purposes—for arguments, authorities, and exhibits being offered in support.

4. Consultation between counsel in accordance with Local Rule 7.1 is not required for this dispositive motion. LCR 7.1(b)(1).

**PRAYER**

WHEREFORE, Lowe's respectfully requests that this Court dismiss Counts II, III, IV, and V of the Amended Complaint in their entirety, and grant all other relief that Lowe's is entitled to at law or in equity.

This the 3rd day of July, 2019.

/s/ Paul J. Peralta  
Paul J. Peralta, Esq.  
N.C. State Bar No. 34622  
Benjamin P. Fryer, Esq.  
N.C. State Bar No. 39254  
Scott M. Tyler, Esq.  
N.C. State Bar No. 23300  
Rachael M. Coe, Esq.  
N.C. State Bar No. 53900  
MOORE & VAN ALLEN PLLC  
100 North Tryon Street, Suite 4700  
Charlotte, NC 28202-4003  
Phone: (704) 331-1024

*Attorneys for Defendants*

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing was electronically filed with the Clerk of Court using the Court's CM/ECF system, which will send notification of such filing to the following counsel of record:

James J. Mills, Esq.  
BURNS, DAY, & PRESNELL, P.A.  
2626 Glenwood Avenue, Suite 560  
Raleigh, North Carolina 27608  
Phone: (919) 782-1441  
jmills@bdppa.com

Kevin J. Stoops, Esq.  
Rod M. Johnston, Esq.  
SOMMERS SCHWARTZ, P.C.  
One Towne Square, 17th Floor  
Southfield, Michigan 48076  
Phone: (248) 355-0300  
kstoops@sommerspc.com  
rjohnson@sommerspc.com

This the 3rd day of July, 2019.

/s/ Paul J. Peralta  
Paul J. Peralta, Esq.